

## REMARKS

Claims 1, 3, 4, 6, 7, 13, 16 through 18, 23 and 48 through 57 are pending in this application.

Claims 1, 3, 4, 6, 7, 13, 16 through 18, 23 and 48 through 57 stand rejected under 35 U.S.C. §112, first paragraph, because the specification, while being enabling for an adhesive backed label being detachably connected to a release liner, does not reasonably provide enablement for a second surface of the three-dimensional tape being detachably connected to an adhesive backed label.

Applicants respectfully submit that claim 1 recites that the adhesive backed label is detachably connected to a release liner, which is fully enabled by the present specification, as noted by the Action.

With respect to claim 55, the Action contends that the specification, while being enabling for a raised structure density, does not reasonably provide enablement for an average gripping structure density.

Applicants respectfully submit that claim 55 recites a raised structure density, which is fully enabled by the specification, as noted by the Action.

Claims 1, 3, 4, 6, 7, 13, 16 through 18, 23 and 48 through 57 stand rejected under 35 U.S.C. §112, second paragraph as being indefinite. Particularly, with respect to claim 1, the Action queries whether the adhesive-backed label is considered the pre-applied adhesive or is there a pre-applied adhesive and a separate adhesive backed layer?

As noted above, claim 1 recites that the adhesive backed label is detachably connected to a release liner. Therefore, claim 1 is definite.

In lieu of the above, Applicants respectfully request reconsideration and withdrawal of the §112 rejections of claims 1, 3, 4, 6, 7, 13, 16 through 18, 23 and 48 through 57.

Claims 1, 3, 4, 6, 7, 13, 23, 48 through 54, 56 and 57 stand rejected under 35 USC §103(a) as being unpatentable over U.S. Patent No. 3,575,169 to Voss ("Voss '169") in further view of U.S. Patent No. 5,491,015 to Reeves et al. (Reeves).

Claim 1 recites an applicator barrel with a finger grip comprising an applicator barrel body having an outer surface and a three-dimensional tape connectable to a portion of the outer surface. The tape includes a first surface and a second surface opposite said first surface. The first surface has formed thereon at least one integrally formed gripping structure. The second surface is detachably connected to an adhesive backed label.

Voss '169 discloses a tampon applicator with an outer tube that has an arrangement of one or more elements secured to the surface of the outer tube. The one or more elements enhance gripping and referencing of the applicator during use. The one or more elements are separately formed from the barrel and are subsequently connected to the barrel via adhesive, radio frequency melting or interference fit.

Applicants respectfully submit that Voss '169 fails to disclose or suggest an applicator barrel with a three-dimensional tape having at least one integrally formed gripping structure on a first surface and a second surface connected to an adhesive backed label detachably connected to a release liner, as recited in claim 1.

Applicants disagree with the Action's characterization of the elements of Voss (see Figures 2-7) as three-dimensional tape. Where plastic elements are formed by an extrusion process to make fluted pipe, which can then be cut and glued separately to the applicator barrel. Clearly, fluted pipe is not tape.

In contrast, Voss '169 discloses elements that are fabricated from paper, cardboard or plastic and are subsequently applied to a tampon applicator barrel by adhesive, interference fit or melt bonding. In the only instance where Voss '169 discloses the use of adhesive backing, it is exclusive to the use of sandpaper having an adhesive backing for affixing the sandpaper to the elements. However, not only is sandpaper not tape, sandpaper is not three-dimensional tape with at least one integrally formed gripping structure, as claimed. To the contrary, the application of sand to paper to form sandpaper is anything but integral formation, but is the combination of two separate components, unlike the present invention. The gripping structure of the claimed invention is formed in the tape itself, and is not a separate component separately formed and subsequently adhered to the tape.

Furthermore, Voss' failure to disclose or suggest a finger grip formed from tape, such as that of the present invention, is further demonstrated in the one instance that Voss does disclose the use of tape in their invention. Tape is used merely in the manufacturing process to hold the elements in place prior to being individually adhered to the tubular member by separate means. The tape itself is not an integral part of the end-product. Clearly, Voss '169 never contemplated the use of the tape as part of the finger grip itself, as recited in claim 1 of Applicant's invention.

Reeves is directed to slip control sheeting with a backing having a first and a second major surface and an array of protrusions on the first major surface. The sheeting can further comprise at least one of a layer of adhesive on the second major surface, a reinforcing web, or a mechanical fastening component for fastening to backing to a substrate (see Abstract). The slip control sheeting is used on gymnastic apparatuses, tool handles, mallets, racquets, baseball bats, golf clubs and sports sticks (col. 1, lines 14-17).

Therefore, contrary to the Action's contention, Applicants respectfully reassert that Voss '169 fails to disclose or suggest any three-dimensional tape, let alone a three-dimensional tape with at least one integrally formed gripping structure on a first surface and a second surface connected to an adhesive backed label detachably connected to a release liner, as in the claimed invention. As such, Voss '169 fails to anticipate or render obvious the claimed invention.

Incorrectly contending that Voss '169 does disclose a three-dimensional finger grip, the Action notes on page 4 that the difference between Voss '169 and claim 1 is the provision that the second surface is connected to an adhesive backed label detachably connected to a release liner prior to connecting the tape to the outer surface of the applicator barrel. To cure this deficiency in Voss '169, the Action relies on Reeves stating that it would have been obvious to one skilled in the art to provide the three-dimensional tape of Reeves in combination with the applicator barrel of Voss because Voss teaches the use of a three-dimensional tape in use with an applicator barrel and the substitution of one three-dimensional tape for another includes only a level of ordinary skill in the art.

As noted above, Voss '169 fails to disclose or suggest the use of three-dimensional tape on a formed tampon applicator. Therefore, due to this lack of disclosure or suggestion in Voss, there can be no motivation to look to any other reference, let alone Reeves, for a teaching of the use of three-dimensional tape on a formed tampon applicator barrel, as in the present invention. As such, the Action fails to make a *prima facie* case of obviousness.

It is only through the incorrect characterization of the finger grip elements in Voss '169 and the erroneous hindsight reconstruction based on Applicant's specification that the Action arrives at the claimed invention. The only disclosure of an applicator barrel with a three-dimensional tape with one or more integrally formed gripping structures on a first surface and a second surface connected to an adhesive backed label detachably connected to a release liner is in the present specification and claimed invention. "The invention must be viewed not after the blueprint has been drawn by the inventor, but as it

would have been perceived in the state of the art that existed at the time the invention was made." Sensonics, Inc. v. Aerosonic Corp., 38 USPQ 2d 1551, 1554 (Fed. Cir. 1996), citing Interconnect Planning Corp. v. Feil, 774 F.2d 1132, 1138, 227 USPQ 543, 547 (Fed. Cir. 1985).

Moreover, even if one were to incorrectly assume that there is motivation in Voss '169 to look to other references for three-dimensional tape as recited in claim 1, Applicants respectfully submit that one skilled in the art would not look to Reeves. Reeves is directed to the use of slip control sheeting on gymnastic stations, athletic equipment, tools and mallets. Notably absent from Reeves is any disclosure or suggestion of using their slip control sheeting on a tampon applicator barrel, as in the presently claimed invention. Moreover, the only disclosure of "tape" in Reeves is in the Background section where Reeves distinguishes its invention over prior art use of tape on grips of game and sports appliances, e.g., rackets (col. 2, lines 13-26). Therefore, it would not have been obvious to one skilled in the art to combine the teachings of Reeves with the Voss '169 applicator in view of the deficiencies in each reference, as noted above.

Therefore, Applicants respectfully submit that claim 1 defines an invention that is neither disclosed or suggested by Voss '169 or Reeves, taken alone or in combination.

Dependent claim 6 recites the applicator barrel of claim 4 and further recites that the plurality of gripping structures form a diamond pattern.

Dependent claim 7 recites the applicator barrel of claim 4 and further recites that the plurality of gripping structures form a box-diamond combination pattern.

The Action considers that the protrusions (22) alone of Reeves to form the diamond pattern (claim 6) and the protrusions along with the underlying portion of the layer (12) to form the box-diamond combination pattern (claim 7), as claimed. Applicants respectfully disagree with the Action's contention. The diamond pattern and the box pattern are clearly depicted in Figures 6 and 7 of the present specification. Looking at Reeves, protrusions

(22) are shown as pyramids or pyramid frustums (col. 2, lines 37-40 and Figure 1). Moreover, layer (12) is merely a backing layer. Nowhere in Reeves is a diamond pattern, a box pattern or a box-diamond combination pattern disclosed or suggested. Therefore, claims 6 and 7 are patentable over the cited art.

Applicants respectfully submit that claim 1, as well as each claim depending directly or indirectly from claim 1, defines an invention that is neither disclosed or suggested by Voss '169 or Reeves, taken alone or in combination. As such, reconsideration and withdrawal of the §103(a) rejection of claims 1, 3, 4, 6, 7, 13, 23, 48 through 54, 56 and 57 is respectfully requested.

Claims 16 through 18 stand rejected under 35 USC §103(a) as being unpatentable over Voss '169 in view of Reeves and further in view of U.S. Patent No. 3,347,234 to Voss (Voss '234).

Claims 16 through 18 each depend directly or indirectly from claim 1. Voss '234 discloses a tampon applicator having a ring secured to the outer surface of the barrel. The ring acts as a tactile indexing and improved gripping means and inhibits inward deformation of the barrel under finger gripping pressure. The ring can be connected to the barrel with adhesive, and may be formed from paper, plastic, metal, emeryboard, ceramic, rubber or the like.

As noted above, Voss '169 fails to disclose or suggest an applicator barrel with a three-dimensional tape having at least one integrally formed gripping structure on a first surface and a second surface connected to an adhesive backed label detachably connected to a release liner, as recited in claim 1. Moreover, Reeves fails to cure the deficiencies of Voss '169.

It is respectfully submitted that Voss '234 also fails to cure the deficiencies of Voss '169, in that it also fails to disclose or suggest the applicator barrel recited in claim 1. In fact, other than a ring, Voss '234 fails to disclose or suggest any other type of fingergrasp

structure, let alone one that remotely resembles the claimed three-dimensional tape having at least one integrally formed gripping structure on a first surface and a second surface connected to an adhesive backed label detachably connected to a release liner.

Therefore, it follows that since none of the cited references, taken alone or in combination, disclose or suggest the applicator barrel recited in claim 1, none of the cited references can render obvious the applicator barrel recited in claims 16 through 18, since these claims depend either directly or indirectly from claim 1.

Therefore, claims 16 through 18 are patentably distinguishable over the cited references. As such, reconsideration and withdrawal of the §103(a) rejections of these claims is respectfully requested.

Applicants respectfully submit that the pending claims define an invention that is neither disclosed nor suggested by the cited references. As such, reconsideration and withdrawal of the rejections and passage of this application to allowance is respectfully requested.

April 13, 2004



Charles N.J. Ruggiero, Esq.  
Registration No. 28,468  
Attorney for Applicants  
Ohlandt, Greeley, Ruggiero & Perle, LLP  
One Landmark Square, 10<sup>th</sup> Floor  
Stamford, CT 06901-2682  
Tel: (203) 327-4500  
Fax: (203) 327-6401